

REMARKS

Reconsideration of the rejection of the claims in this application for the reasons set forth in the Office Action mailed August 22, 2003, Paper Number 11, is respectfully requested in view of the foregoing amendment of the claims, the enclosed Affidavit Under 37 CFR 1.132 of James McLaughlin and the remarks that follow.

As described by generic amended claim 40, the claimed invention relates to a cosmetic exfoliating composition for cleansing and conditioning the skin in the form of cream or extrudable paste comprising, by weight, (A) 40% to 60% of emollient material consisting of a major proportion of any emollient oil and a minor proportion of an emollient hydrophobic compound selected from the group consisting of C12 to C18 fatty alcohols, C12 to C18 fatty acids, C12 to C18 fatty esters, Shea butter, lanolin or a lanolin derivative, lecithin and mixtures thereof; (B) 0.4% to 8.0% of a water-soluble surfactant selected from the group of anionic, nonionic, amphoteric, zwitterionic and cationic surfactants, said proportion being effective to deposit a skin softening amount of emollient material on the treated skin without a greasy after feel when said composition is applied to and rinsed from the skin with water and the skin is dried; (C) a calcium or magnesium salt of a C14 to C18 monocarboxylic acid, the weight ratio of said emollient material to said monocarboxylic acid being in the range of 4:1 to 2.5:1 and adequate to produce a composition in the form of an extrudable paste or cream; (D) 10% to 45% of a non-irritating, mildly abrasive, skin compatible particulate material that is effective to cleanse and lubricate the skin without abrading the skin, said particulate material including a mixture of a particulate material selected from the group consisting of sodium chloride, pumice, talc and plant seed flour with 8% to 20% by weight of starch material selected from the group consisting of starches and

enzyme or acid hydrolyzed starches; and (E) 0% to 10% of water; said composition being effective to cleanse, soften, smooth and moisturize the skin when the composition is applied to and massaged into the skin, thereafter rinsed from the skin with tepid water and the skin is dried.

Amended Claim 40 describes the cosmetic exfoliating compositions comprising the preferred proportions of the preferred emollient material described in the specification at page 4, lines 17 to 23, and page 5, lines 27 to 30; the preferred water-insoluble monocarboxylic acid salts in the preferred proportions with respect to emollient material described in the specification at page 11, lines 8 to 15; the preferred proportions of particulate material set forth in the specification at page 12, lines 26 and 27, containing the preferred mixture of starches (page 12, lines 28 to 30) with the other preferred particulates set forth at page 5, line 31 to page 6, line 1; and the preferred proportions of water set forth at page 13, lines 6 to 8. Further, the Examples 1 – 6, 10 – 15, 18 and 20 exemplify the compositions defined by amended generic Claim 40 wherein the particulate material includes 8% - 20% by weight of starch or starch derivative and a particulate material selected from the group consisting sodium chloride, pumice, talc and vegetable seed flour.

Further, the dependent claims claim compositions wherein the monocarboxylic acid salt is calcium stearate (Claim 3); the surface active agent is an anionic surfactant (Claim 6); the anionic surfactant is sodium cocoyl N-methyl taurate (Claim 7); the most preferred proportions of particulate material (Claim 33); the emollient oil is macadamia nut oil (Claim 39); and the different proportions of surface active agent for compositions particularly suitable for cleansing the hands (Claim 41), the heels, knees and elbows (Claim 42) and the face and body (Claim 43). Basis in the specification for the dependent claims is as follow: Claim 3 is based upon page 11, lines 6 – 7, Claims 6 and 7 are based upon page 10, lines 4 – 6, Claim 33 is based upon page 12,

line 28; Claim 39 is based upon Examples 1 and 10 – 12 and Claims 41 – 43 are based upon the description at page 6, lines 17 – 22, and examples 1 – 6.

Before discussing the Rejections under Detailed Action, Claim Rejections 35 U.S.C. 112 and Claim Rejection 35 U.S.C. 103, it is considered that a review of the claimed invention is in order. As described by generic Claim 40, the claimed invention relates to a preferred exfoliating composition in form of a cream or extrudable paste comprising, by weight, 40% to 60% of an emollient material consisting of major proportion of an emollient oil and minor proportion of a hydrophobic compound selected from the group of C12 to C18 fatty acids, alcohols, esters and mixtures thereof; a water-soluble surface active agent selected from the group of anionic, nonionic, amphoteric, zwitterionic and cationic surfactants in a proportion in the range of 0.4% to 8% by weight sufficient to leave a thin film of emollient on the treated skin without a greasy after-feel upon rinsing said composition from the skin with tepid water and drying; a magnesium or calcium salt of a C14 – C18 monocarboxylic acid in a weight ratio of emollient material to said monocarboxylic acid salt in the range of 4:1 to 2.5:1 that is adequate to produce an extrudable paste or cream; 10% to 45% of skin compatible particulate material comprising a mixture of 8% to 20% of a starch material with a particulate material selected from the group of sodium chloride, pumice, talc and vegetable seed flour; and 0% to 10% of water, said composition being effective to cleanse and lubricate the skin when it is applied to and massaged into the skin, thereafter rinsed from the skin with tepid water and the skin is dried. The significant characteristics of the claimed composition are (1) extrudable paste or cream form that is (2) effective to cleanse, moisturize and soften skin without a greasy after-feel in use and (3) environmentally innocuous particularly when the particulate mixture consists of starch and sodium chloride or vegetable seed flour or talc.

Thus, the important characteristics of the claimed compositions are the paste or cream physical

form with a content of a particulate mixture that is effective to cleanse and moisturize the skin in use and stable against separation in the temperature range of 4 C. to 50 C. and environmentally innocuous.

Further, the generic claim defines the important parameters in order to obtain said desirable skin cleansing and conditioning compositions; i.e., (a) emollient material consisting of major proportion of emollient oil and a minor proportion of hydrophobic fatty material, (b) a controlled amount of a surfactant within the claimed range that the leaves an emollient film in use without a greasy after-feel, (c) use of a magnesium or calcium C14 – C18 monocarboxylic acid salt in a proportion selected from claimed ratio range that is sufficient to thicken the emollient material and effective to produce a stable paste or cream, (d) use of the claimed proportion of particulate materials that include 8% to 20% by weight of a starch material with another specific claimed particulate material and (e) 0% to 10% by weight a water.

It is noted that paragraphs 1 and 2 under the heading Detailed Action make the restriction requirement FINAL, thereby restricting the examination herein to the compositions described by Claims 1 – 34 based upon the Examiner's allegation that claimed compositions could be used for cleaning dishes, i.e., "There is no indication that the composition would form a film on ceramic materials, and one of ordinary skill in the art would have not expected the composition would form a film on dishes." Applicant again disputes the Examiner's foregoing unsupported conclusion since it is common knowledge that oily substances can form a film on dishes made of ceramic materials. Furthermore, the inventive compositions herein are designed to leave a film of oil on skin ostensibly because the compositions contain 40% to 60% by weight of oily material and 0.4% to 8% by weight of detergent. Therefore, one of ordinary skill in the art could well conclude that a film of oil could remain on dishes treated with the inventive compositions because there is not

enough surfactant to remove all of the oily matter when the composition is applied to the dishes and then removed by rinsing with tepid water. In conclusion, the Examiner's reason in support the restriction requirement herein is open to question by one skilled in art and, therefore, restriction pursuant to 37 C.F.R. 1.142(b) should not be sustained.

The Claim Rejections 35 U.S.C. 112 set forth in paragraphs 3, 4 and 5 of the Office Action are not applicable to the amended claims. More particularly, the term "substantially" does not appear in the amended claims and water content of the claimed compositions is specified as 0% to 10% by weight based on page 13, lines 6 - 8, of the specification.

The Claim Rejections 35 U.S.C. 103 set forth in paragraphs 6, 7, 8 and 9 of the Office Action as being unpatentable over Kellner is untenable and hereby traversed for the following reasons:

- (1) Kellner discloses water and oil emulsion cosmetic composition in **solid form** for delivering pigments to the skin that are unlike applicant's claimed exfoliating cosmetic in the form of cream or extrudable paste that cleanse the skin and leave a thin film of emollient thereon.
- (2) Kellner teaches that sodium stearate and calcium stearate are equivalent primary gelling agents and that teaching is **false**.
- (3) A principle object of Kellner's invention is cosmetic sticks containing "appreciable levels of water" (col. 1, line 35) and "appreciable amounts of water" (col. 1, lines 44-45), not applicant's compositions in form of a cream containing 0 – 10% by weight of water.

Furthermore, all of the exemplified compositions of Kellner contain at least 37% by weight of water and 8 – 18% by weight of butylene glycol, i.e., a solvent that is nowhere discussed in the

specification of Kellner. The Examiner is urged to address this glaring omission if this ground of rejection is repeated.

With respect to point 1 in the foregoing paragraph, the Examiner is reminded that the prior art discloses cosmetic compositions in a variety of forms, e.g., solid sticks and bars, paste or cream, liquid, aerosol and impregnated paper or fibrous substrate, and the Examiner knows that one skilled in the art knows the attributes and problems vary with each of foregoing forms. Thus, one skilled in the art would not consider Kellner's compositions in the form of solid stick for delivering pigments to the skin to be relevant to design of cosmetic compositions in the form of a cream or extrudable paste for cleansing and conditioning the skin. For example, there is no problem of stability with respect to suspended particulate matter in a solid stick, but there is in Applicant's extrudable paste or cream form. Also, the problem of proportioning the surfactant so as to leave a thin film of emollient on the skin is not present in Kellner at all. Furthermore, sodium stearate is a water-soluble anionic surfactant (col. 19, lines 8 – 12) as well as primary gelling agent (col. 2, line 25 – 62), i.e., an impermissible double inclusion, and, therefore, all of exemplified compositions of Kellner contain 10% to 11.5% by weight of surfactant, e.g., sodium stearate plus sucrose cocoate/sorbitan stearate plus PEG-20 methyl glucose sesquiisostearate, and 14% to 24% by weight of emollient, e.g., proportions unlike Applicant's minimum emollient to surfactant ratio of 5:1. Thus, Applicant concludes that one skilled in the art would not expect any oil to remain on skin if Kellner's exemplified compositions containing 10 – 11.5% by weight of surfactant were rinsed from the skin with water..

With respect to Applicant's point 2 above, Kellner ostensibly teaches at column 2, lines 25– 63, that "Examples of gelling agents which may be used in compositions of the invention are sodium...calcium salts of stearic...acids...." and that teaching is relied upon by the Examiner in

paragraph 8 of the instant rejection under 35 U.S.C. 103. More particularly, the Examiner's attention is directed to accompanying Affidavit Under 37 C.F.R. 1.132 of James Hugh McLaughlin. Said affidavit documents that compositions containing 5% by weight of sodium stearate and 95% of water and 10% by weight of sodium stearate and 90% by weight of water resulted in solid compositions whereas the identical compositions with calcium stearate replacing sodium stearate resulted in a upper layer of particles of calcium stearate and a lower layer of water. The explanation for these results is found at pages 3-1 and 3-227 from CRC Handbook of Chemistry and Physics and pages 532 and 801 of The Condensed Chemical Dictionary, Ninth Edition attached to said affidavit that show that sodium stearate has melting point of 68.8°C. and is water soluble and calcium stearate has a melting point of 179.5°C. and is water insoluble. Further, the Examiner's attention is directed column 22, lines 51 –67, wherein Kellner describes the process of preparing his cosmetic sticks consisting of dispersing sodium stearate in 90°C. water and ultimately pouring said mixture into stick molds after addition some other ingredients. Because the Examiner's rejection herein is based upon Kellner's erroneous teaching of the equivalence of sodium stearate and calcium stearate, this ground of rejection must be withdrawn by the Examiner.

Applicant's point 3 above is cumulative to points 1 and 2. More particularly, the Examiner relies on the broad ranges for water, i.e., 5 – 95%, but ignores the fact that a stated object of Kellner is cosmetic sticks "which contain appreciable amounts of water" (col. 1, lines 43-44), and the exemplified compositions contain 37.7% (Example 2C) to 50.4% (Example 2D) water and the mystery butylene glycol ingredient that Kellner does not discuss. In the instant case Applicant submits the specific disclosures, e.g., the exemplified compositions, take preference over the general disclosures in interpreting the teachings of the reference. Furthermore, Kellner's

erroneous teaching of the equivalence of sodium stearate and calcium stearate as equivalent gelling agents for water and the unexplained use of an ingredient not discussed in specification in each of the exemplified compositions as well as double inclusion of sodium stearate as a primary gelling agent as well as a surfactant raises a serious questions as to credibility of any teachings of Kellner et al. relied upon the Examiner.

Cumulative to the foregoing shortcomings of Kellner, Kellner does not recognize the advantages of Applicant's claimed particulate mixture of 8% to 20% by weight of a starch material admixed with sodium chloride or talc or pumice or a vegetable flour. Kellner discloses at columns 19 and 20 many particulate materials that may be present in the stick compositions, with mixtures of non-pigmented and pigmented particulates being preferred according column 20, lines 6 to 17. Further, only two exemplified compositions contain starch, i.e., Compositions A and C contain 1% by weight of aluminum starch octenylsuccinate. Thus, Kellner does not teach or recognize the virtues of including Applicant's claimed particulate mixture for purpose of cleansing the skin.

In paragraphs 10 – 13 of the Office Action, the Examiner supplements the rejection based upon Kellner with references to Barker (US 5,360,824), Street (US 6,017,351), McAtee et al. (US 6,153,208) and Touzan et al. (US 6,033,647). Again, with the exception of Barker, the cited references refer to non-analogous compositions, i.e., Street discloses a non-woven pad containing embedded abrasive particles; McAtee et al. describes a dry two layer tissue paper containing a surfactant and a separate emollient; and Touzan et al. describes a post foaming aerosol composition comprising an oil in water emulsion composition that is delivered in form of a cream. Barker relates to a cosmetic composition in the form of a cream containing sodium chloride dispersed in an emollient oil. Thus, with the exception of Barker, the foregoing references would

not be considered relevant by one skilled in the art to the problem of making a cosmetic cream for cleansing and moisturizing the skin.

The addition of Barker to Kellner does not remedy the shortcomings of that reference discussed above. Barker discloses and claims a relevant composition in the form a cleansing cream containing a “base of edible oil and/or petroleum jelly” with granules of an “inorganic non-irritating salt...sodium chloride...salt of vitamin” uniformly distributed therein (col. 1, lines 56 – 65) and Example I describes a composition containing 20% by weight of sodium chloride particles distributed in 80% by weight of a base of equal proportions of corn oil and petroleum jelly.

Barker’s composition is relevant because it is in the form of a cream containing two of Applicant’s essential ingredients, i.e., emollient oil and particulate sodium chloride. However, Barker’s compositions do not contain Applicant’s water-insoluble carboxylic acid salt thickener ingredient or Applicant’s essential surfactant ingredient or Applicant’s starch ingredient. Furthermore, even in unwarranted combination with the non-analogous stick compositions of Kellner et al., the

combination of the references does not remedy the shortcomings of Barker because of the shortcomings of Kellner et al. discussed above. Barker is cited by the Examiner to show that “sodium chloride particulate are (sic) known to be useful in cleansing compositions.” Applicant made reference to Barker in the specification (page 3, lines 20 – 23, and in Example 16) and directs the Examiner’s attention to Applicant’s Example 16 wherein Applicant reproduced Barker’s Example I with stated result that Barker’s composition is not stable because the sodium chloride precipitated in less than one hour. Applicant admits that Barker discloses the use of sodium chloride in cleansing composition that is not useful because the resultant composition is not stable. Thus, Barker is pertinent because discloses incorporation of sodium chloride in an emollient material is a problem because the resultant composition is unstable and, therefore,

Barker is evidence Applicant's stable cream compositions containing a particulate sodium chloride are novel and unobvious.

Similarly, the Examiner refers to Street to show that pumice has been used in "a cosmetic pad comprised of... fibrous, non-woven structure of mixed denier nylon or polyester...bonded at contacting points with a binder such as a thermosetting resin containing...abrasive particles (col. 3, lines 41 – 46)...such as pumice (col. 4, line 48)." The only thing that Kellner and Street have in common is that cosmetic sticks of Kellner and cosmetic pad of Street are applied to the skin. Again, it is Applicant's position that one skilled in the art having the task of designing a composition for cleaning and conditioning the skin in the form of a cream or extrudable paste would not consider Kellner's stick compositions or Street's cosmetic pad as relevant prior art.

McAtee et al., like Street, relates to a single use, disposable cleansing and conditioning article comprising a water insoluble paper layer (col. 12, line 30) joined to a second layer of woven or non-woven materials (col. 14, lines 44 – 55) impregnated with at least one surfactant and a conditioning material, e.g., an emollient material. The article is dry prior to use and is designed to generate a foam when wetted with water in use (col. 5, lines 1 – 4). Again, common denominator is that McAtee's article and Kellner's stick are applied to the skin, but neither reference is relevant to Applicant's skin compositions in the form a paste or cream which contains a suspension of particulate material to cleanse the skin and controlled proportions of emollient and surfactant designed to leave a film of emollient material on the skin when the composition is rinsed from the skin. Again, Applicant maintains that the inventive paste or cream composition is unlike the two layer cleaning pad of McAtee et al. or pigmented solid stick of Kellner and one skilled in art would not consult either reference in designing Applicant's paste or cream composition for cleansing and conditioning the skin. The Examiner relies upon McAtee et

al. for its disclosure of sodium cocoyl methyl taurate at column 20, lines 1 – 13, as anionic lathering surfactant for use in the article of McAtee et al. Applicant acknowledges the fact sodium cocoyl N methyl taurate is a foaming anionic surfactant.

Touzan, like Street and McAtee et al., discloses non-analogous self foaming cream composition for treating the hair or skin comprising an oil in water emulsion gelled with an emulsifying polymer (col. 2, lines 29 – 55) that is pressurized with a propellant gas (col.6, lines 44 – 54) and that is delivered in form of cream that foams when spread on the skin (col. 2, lines 61 – 65). The exemplified compositions contain 74 – 75% by weight of water and less than 2% by weight of surfactant and are unlike either Applicant's cream or paste containing 0 – 10% by weight of water or Kellner's exemplified stick compositions containing 37% - 50% by weight of water and a minimum of 10% by weight of surfactant. Touzan is cited by the Examiner for its use of macadamia oil in composition that is applied to skin.

In summary, the foregoing discussion proves that Kellner does not teach or suggest Applicant's cleansing and conditioning compositions in the form of a cream or extrudable paste containing emollient material, surfactant, a particulate mixture including 8 – 20% by weight of starch material and sodium chloride or pumice or talc or vegetable flour and 0% – 10% by weight of water that is thickened with a calcium or magnesium salt of C14 – C18 monocarboxylic acid and is effective to clean the skin and leave a film of emollient on the skin when the composition is rinsed from the skin with water and the skin is dried. Kellner relates to non-analogous compositions in the form of a solid stick containing particulate material for coloring the skin and containing sodium stearate as gelling agent. Kellner's teaching that sodium stearate and magnesium or calcium stearate are equivalent gelling agents is false and one skilled in art would not give any credibility to said teaching. No other reference cited by the Examiner discloses or

suggests the use of magnesium or calcium monocarboxylic acid as thickening agent for the combination of emollient material, surfactant and a particulate mixture including 8 – 20% by of a starch material. Therefore, no combination of the references relied upon by Examiner fairly suggests Applicant's inventive compositions. Furthermore, no reference or combination of references recognizes the claimed criticality of the ratios of emollient to surfactant and to monocarboxylic acid salt that are needed to make the claimed stable paste or cream compositions that are effective to cleanse, soften and smooth the skin and leave a non-greasy deposit on skin after use. Thus, the rejection herein under 35 U.S.C. 103 based upon the solid stick compositions of Kellner in combination cream compositions of Barker, the solid pad of Street, the multi layered, impregnated article of McAtee et al. and aerosol compositions of Touzan is not valid for being based upon the Examiner's 20/20 hindsight reconstruction of Applicant's invention in view of Applicant's specification and said rejection has to be withdrawn by the Examiner.. Rhm

Because the Applicant has advised the Examiner of the rejection of Applicant's corresponding PCT application and supplied the Examiner with the references on which the PCT rejection was based, the Applicant will voluntarily address that rejection with respect to the amended claims presented herein.

For the record, the search in the PCT application applied to cosmetic compositions comprising, by weight, (A) 35% to 80% of emollient material, (B) 0.4% to 8% sodium cocoyl methyl taurate, (C) calcium stearate wherein the weight ratio of emollient to calcium stearate is in the range of 7:1 to 1:1 and 0% to 15% water. Said composition was analyzed with respect BE-A 1000757, WO 96 21425A, GB-A 2,297,975, GB-A 2,317,396, US-A 5,720,961, US-A 4,104,403 and US-A 4,446,165. The conclusions in the PCT written opinion were that that claimed composition was novel, but did not involve an inventive step as being obvious from

BE-A 1000757.

BE-A 1000757 discloses and claims emollient shower gels containing, by weight, 10% to 90% emollient oil and 0.1% to 20% oil compatible surfactant gelled with 2% to 40% of a gelling agent which can be a water insoluble stearate or palmitate salt or homopolymeric alkene, or an alkene copolymer or chemically modified clay or a resin or a natural or synthetic wax. The gelling agents utilized in four exemplified composition are a wax (Example 1) and a polyethylene (examples 2 – 4). Based upon the statement that water-insoluble stearate can be gelling agent, Applicant acknowledges that Applicant's claimed three component compositions comprising emollient, surfactant and calcium stearate are obvious from BE-A 1000757 0

But, because claimed composition herein contains 10% to 45% of particulate matter comprising 8% to 20% of starch material and particulate compound selected from the group consisting sodium chloride, pumice, talc and a vegetable flour, Applicant maintains that the claimed compositions are not obvious from BE-A 1000757. More specifically, the Belgian patent teaches that the disclosed shower gel compositions may include fatty esters, fatty alcohols, polysiloxanes and silicone oils for additional emollient properties as well as perfumes, quaternary ammonium salt for the hair and therapeutic substances such as pine tar. Thus, the Belgian patent does not disclose Applicant's claimed compositions herein containing the claimed particulate matter and benefits derived therefrom. Furthermore, the Belgian patent does not disclose or suggest that Applicant's claimed method of cleansing and conditioning the skin.

For the record, DE 10133399A discloses non-analogous composition based upon wax ingredient that is a solid at room temperature and is suitable for coating tissue paper and wipes for use on the skin. There is no reference to the wipes leaving a non-greasy film of emollient on the skin in use. The disclosed composition contains, by weight, 1% to 50% of an oil or wax

component selected from the group of C14-C30 dialkylene ethers, C14-C30 dialkylene carbonates, C12-C34 dicarboxylic acids or C12-C30 hydroxy fatty alcohols or mixtures thereof; 0.1%-90% fat like substances including fatty acids, fatty alcohols and fatty esters; 1%-15% emollient oils; 0.1%-10% of plant extracts or a zinc compound or a sulfur compound; 0.2%-2% of a germ inhibiting agent; 0.1%-20% of a moisture retaining agent such as starch; 0%-20% of an emulsifier such as a nonionic surfactant; and 0%-10% of water. Because the described compositions are solids at room temperature, the disclosed compositions are different from and not analogous to Applicant's compositions in the form of a cream or an extrudable paste. Although this reference teaches that all of Applicant's claimed ingredients, e.g., emollient oil, calcium stearate, a surfactant, starch, talc, fatty alcohols, fatty acids, etc. may be present in the described solid compositions, the described proportions are different and the exemplified compositions are unlike Applicant's compositions. For example, fatty alcohols comprise 67% to 83% by weight of compositions of Examples 1 – 4, and 13 – 15. Also, there is no detailed description of application of the described solid composition to paper wipes. Thus, it is Applicant's position that one skilled in art would not consider the compositions this application as relevant to either the compositions disclosed in Belgian patent or to Applicant's skin cleansing and moisturizing compositions in the form of cream or extrudable paste.

GB-A 2,297,975 describes and claims aqueous personal cleansing compositions containing, by weight, 5% - 60% of surfactant, 0.1%-5% of a water-insoluble salt of a C14 – C22 fatty acid, 0.01% - 5% of a skin conditioning polymer and 0.005% - 5% of a trihydroxystearin suspending agent. The exemplified compositions contain about 69% to 80% by weight of water. Again, the described aqueous compositions are unlike Applicant's claimed composition that contains a 0% to 10% by weight of water.

Similarly, GB-A 2,317,396 relates to non-analogous personal cleansing composition in the form of soap bar containing, by weight, 30% - 90% of soap, 1% - 35% of a nonionic, amphoteric or anionic surfactant and at least a combination of two of following ingredients: 1% - 25% of each of a fatty acid and a fatty alcohol and 1% - 25% of a hydrocarbon material with a melting point greater than 25 C. e.g., paraffin wax. Preferably the bar contains from 1 - 15% by weight of talc, starch or dextrin. Again, the three exemplified compositions contain, by weight, 74% - 76% sodium soap, 15% - 20% of 50/50 mixture fatty alcohol and fatty acid and 5% - 7.5% of an anionic or amphoteric surfactant. Again, one skilled art would not consider a soap bar to be relevant prior art in designing Applicant's skin cleansing and moisturizing cream and extrudable paste containing a maximum 8% by weight of surfactant.

U.S. 5,720,961 discloses non-analogous aqueous -20% to 99.85% by weight of water-- composition for cleaning the skin containing, by weight, 0.05% - 40% of a surfactant, 0.1% - 20% insoluble micronized particles and, optionally 0% - 50% emollient (col. 2, lines 34 - 47). The micronized particles are listed at col. 4, line 27, to col. 5, line 19, and the list includes corn starch, oat flour, pumice and talc among others with synthetic polymeric particles being preferred and micronized polyethylene and polypropylene particles being the most preferred. Six of the exemplified compositions contain more than 80% by weight of water together 4% of polyethylene beads, 1% - 7% surfactant and from 0% - 12% emollient. The seventh example is a soap bar. containing 70% of soap surfactant. Again, the disclosed compositions do not even remotely resemble Applicant's claimed cream or extrudable paste compositions.

U.S. 4,104,403 describes cosmetic compositions in the form of water in oil emulsions comprising, by weight, 40% - 85% water emulsified in a cosmetic oil by a mixture of 0.5% - 5% phosphated glyceride and 0.5% - 3% of aluminum or calcium stearate. This patent is noteworthy

because it states that calcium stearate is insoluble in water and sparingly soluble in hot mineral oil (col. 2, lines 53-55). Further, the reference implies the gel produced by calcium stearate and oil is unstable at room temperature. Again, the disclosed water-oil emulsion compositions in the form of cream are totally unlike Applicant's cream or extrudable paste compositions due to the presence 40%-85% by weight of water.

U.S.4,446,165 describes water in oil emulsion compositions comprising, by weight, 25% - 95% of an oil phase having dispersed therein 0% - 75% of an aqueous phase and said composition having dispersed therein particles of an immobilized water-in-oil emulsion destabilizing agent, e.g., an anionic or nonionic surfactant having a HLB of at least about 12. The disclosed compositions can be used as margarines or hand creams. Hand creams are exemplified in Examples X and XI and said creams are water-in-oil emulsions containing 35% - 55% by weight of water. There is no particulate matter in either of the exemplified hand creams and the hand cream of Example X contains 0.27% by weight of calcium stearate whereas the hand cream of Example XI contains 0% by weight of calcium stearate. Again, the disclosed hand creams are unlike Applicant's claimed cream for cleansing and conditioning the skin.

In summary, foregoing summary of the references cited in the prosecution of Applicant's corresponding PCT application emphasizes the novelty and unobviousness of Applicant's claimed compositions herein containing controlled proportions of emollient and surfactant to leave a non-greasy film of emollient on the skin in use and further including particulate matter comprising a mixture 8%-20% by weight in combination with sodium chloride or talc or pumice or vegetable flour for enhanced cleaning of skin. The claims cover the preferred compositions set forth in the specification and claims. Due to differences in the ultimate form of the compositions, i.e., the cream of BE-A 1000757 and solid compositions of WO 96,21245 and GB 2,317,396 and aqueous

compositions of GB-A 2,297,975 or US 5,720,961 or US 4,104,403 or US 4,446,165, no combination of any of secondary references with BE-A 1000757 can fairly suggest Applicant's claimed compositions herein. Further, the same conclusion applies to any proposed combination of any reference cited by the Examiner with BE-A 1000757. In the interest of fairness, Applicant challenges the Examiner to take any fair combination of references cited herein to reproduce Applicant's claimed composition in the form of cream or extrudable paste for cleaning and conditioning the skin characterized by the superior performance results reported in Table I at page 18 of the specification. More specifically, it is not enough to show all ingredients have been used in skin compositions and give no credence to proportions and ratios of those ingredients.

For the record, the decisions in In re Wertheim, 541 F.2d 257, 191 USPQ 90, and In re Woodruff, 919 F.2d 1575, 16 USPQ 1934, are not applicable to facts presented in the instant application and the decision in Ex parte Winters, 11 USPQ2d 1387, is rebutted by superior conditioning properties of claimed compositions set forth in Table I at page 18 of Applicant's specification versus the recognized competitive products currently in marketplace.

In conclusion, Applicant has invented a novel and useful skin cleansing and conditioning composition that is new, useful and unobvious from any fair combination of the references cited by the Examiner or PCT search. Further, the claimed compositions in use are very effective according to evaluation set forth in the Table following Example 1 and are environmentally innocuous. Accordingly, the claimed compositions are in accord with U.S.C. 101 – 103 and early allowance of claimed invention is respectfully solicited.

Respectfully submitted,

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Enc. Affidavit Under 37 CFR 1.132